

MELISSA A. TURLEY)
 Claimant)
 VS.)
 Respondent)
STATE OF KANSAS)
 Respondent)
 AND)
STATE SELF-INSURANCE FUND)
 Insurance Carrier)

Docket No. 247,457

1. Ms. Turley is a corrections officer employed by the Kansas Department of Corrections at the Topeka Correctional Facility.

2. On July 23, 1999, shortly after reporting to work Ms. Turley's back popped after she had sat down and while she was pulling her chair up to her desk. When she then stood up, she felt excruciating pain in her low back. Ms. Turley immediately reported the incident to her supervisor.

3. Before this incident, Ms. Turley had not experienced any back problems. Following the incident, Ms. Turley underwent a CAT scan and has been diagnosed as having two herniated discs in her low back at the L4-5 and L5-S1 intervertebral levels.

CONCLUSIONS OF LAW

1. The Order should be affirmed.

2. Ms. Turley sustained a work-related accident on July 23, 1999, that injured her low back. The accident arose out of and in the course of her employment with the State of Kansas.

3. The State of Kansas argues that Ms. Turley injured her back in an activity of daily living and, therefore, her back injury cannot be considered as having been caused by work. They cite K.S.A. 1998 Supp. 44-508(e), which provides:

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. **An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.** (Emphasis added.)

Unfortunately, the Workers Compensation Act does not define the phrase "normal activities of day-to-day living." Attempting to provide that phrase with a reasonable interpretation, the Appeals Board has previously held that K.S.A. 1998 Supp. 44-508(e) is a codification of the Boeckmann¹ decision where the Kansas Supreme Court denied benefits as Mr. Boeckmann's arthritic condition progressively worsened regardless of his activities. The Court said:

. . . there is no evidence here relating the origin of claimant's disability to trauma in the sense it was found to exist in Winkelman. No outside thrust of

¹ Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

traumatic force assailed or beat upon the workman's physical structure as happened in Winkelman.²

4. The Workers Compensation Act states that the term "accident" should be construed in a manner to effectuate the Act's primary purpose that employers bear the expense of work-related accidents. The Act provides:

"Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and **often, but not necessarily, accompanied by a manifestation of force**. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate **the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment**.³ (Emphasis added.)

5. The Appeals Board finds that Ms. Turley sustained trauma to the discs in her low back while she was sitting and pulling her chair to her desk. And that trauma was sufficient to herniate two of those discs in her low back. Therefore, she sustained an identifiable accident and the Boeckmann case is distinguishable from this claim.

6. For purposes of preliminary hearing, Ms. Turley has established that her work activities have resulted in trauma and injury to her low back.

WHEREFORE, the Appeals Board affirms Judge Benedict's October 1, 1999 preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: George H. Pearson, Topeka, KS
Marcia L. Yates, Topeka, KS

² Boeckmann, p. 736.

³ K.S.A. 44-508(d).

Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director